Panel Decision for dispute CAC-ADREU-008118

Case number	CAC-ADREU-008118
Time of filing	2021-04-26 11:45:46
Domain names	eurastip.eu

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	EATIP

Respondent

Organization	SASU G2 EDITION

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of other pending or decided legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant EATIP ASBL is an international non-profit association dedicated to developing, supporting and promoting aquaculture. EATIP is the acronym of “European Aquaculture Technology and Innovation Platform”. In particular, it aims at developing technology and innovation in aquaculture, assuring a sustainable aquaculture industry, and consolidating the role of aquaculture in society.
EURASTIP is a research, development and innovation project created by EATIP in 2017 and granted by the EU Commission. It was funded by the EU Horizon 2020 Program and was conceived for a three-year duration, from January 2017 to December 2019. Its main purpose was to evaluate, prepare and promote the launch of a European-Asian Aquaculture Technology and Innovation Platform, namely, an international multi-stakeholder platform to create and reinforce cooperation on sustainable aquaculture between Europe and South-east Asia. This project had its own trademark consisting of the word EURASTIP with a stylized fancy device above it. A domain name <eurastip.eu>, identical to the project name, was registered by EATIP. All information about the project as well as main activities related thereto were available through the web site www.eurastip.eu.
Due to an administrative mistake in providing the codes for the domain transfer from the previous registrar “Register.com” to a new one, the domain name <eurastip.eu> was first put on quarantine and afterwards purchased by SASU G2 Edition. The Respondent is a French company seated in Colombelles. According to the information available in the Internet, it is active in the field of Internet portals (https://www.societe.com/societe/g2-edition-850669292.html).
EATIP, in the name of its executive secretary Mrs. Catherine Pons, filed a Complaint through the ADR.EU platform on February 5, 2021 by asking for the transfer of the afore said domain name. An amended Complaint was then filed on February 12, 2021 further to a request by the Case Administrator to remedy to a few deficiencies in the communication of the Respondent’s contact details and in the description of the grounds on which the Complaint was based.
The present ADR proceeding commenced on the same date.
A Complainant’s non-standard communication followed on February 19, 2021 with a Respondent's email meanwhile received by the Complainant’s IT provider attached thereto. Since said e-mail was not in the language of the procedure, the Panel asked the Complainant for an English translation of the document which was not however provided within the due term.
The Respondent did not file a response through the ADR.EU platform within the given term.

A. COMPLAINANT

The Complainant claims that the name EURASTIP was created as identifier of a European research project granted to EATIP by the EU Commission in 2017. As evidence thereof, the Complainant has submitted the following documents:
- grant agreement No. 728030 concerning the EURASTIP project, signed by the European Commission on 12.10.2016 and having EATIP as beneficiary;

- EURASTIP project presentation leaflet; the document is not dated, but it shows a picture of EURASTIP partners at the kick-off meeting in January 2017. It moreover contains the indication that the project has received funds from the EU Horizon 2020 research and innovation program under grant agreement No. 728030 (EURASTIP).

The Complainant reports that the disputed domain name and trademark were created to support and manage the afore said project. The following evidences have been filed:
- specimen of the device mark EURASTIP;
- e-mail sent to EATIP by the provider WordPress.com on December 15, 2017 which informs about the automatic renewal of the domain name <eurastip.eu>;
- login details to www.eurastip.eu web site dated June 26, 2019;
- order confirmation issued from Register.com on December 12, 2019 for the maintenance of DN <eurastip.eu> in the name of EATIP.

The Complainant moreover reports that EURASTIP name, trademark and domain name have been continuously used during the whole duration of the project to promote and manage activities as well as in the relationship with consumers and partners. The following supporting documents have been filed with the Amended Complaint:
- EURASTIP project presentation page on Twitter showing the EURASTIP trademark and name as well as a link to www.eurastip.eu;
- link to www.eurastip.eu present on www.eatip.eu, with use of the trademark and project name;
- brochures of events organized within the EURASTIP project during years 2018/2019, and showing: a) the project name and EURASTIP device mark; b) the indication of www.eurastip.eu web site for background information, program and registration to the event; c) the indication of EURASTIP page on Twitter.

The Complainant informs that an incident occurred during the domain name transfer from the previous registrar Register.com to a new registrar. Transfer codes were erroneously forwarded, having as a consequence that the domain name was put on quarantine and taken by a robot. As evidence thereof the following documents have been submitted:
- correspondence exchanged in December 2020/January 2021 between the Complainant's IT provider and Register.com showing that: a) the codes forwarded by Register.com for the DN transfer didn't work; b) at the beginning of January 2021 the disputed DN had been deleted from the Complainant's account held by Register.com.
The Complainant claims that the Respondent got the disputed domain name due to a technical error. The Complainant finally informs that the Respondent, by an e-mail sent to the Complainant's IT provider on February 16, 2021, acknowledged that he had no rights of ownership related to the disputed domain name and moreover asked for money for the re-assignment of the domain name to the Complainant, but evidence thereof has been disregarded for the reasons reported below.

B. RESPONDENT

The Respondent didn't file a response within the term set by the Case Administrator.

DISCUSSION AND FINDINGS

As a preliminary remark, the Panel informs that the document enclosed with the Complainant's Nonstandard Communication dated February 19, 2021 and consisting of an e-mail sent by the Respondent to the Complainant's IT provider on February 16, 2021, was filed after the term set by the Case Administrator for filing an Amended Complaint and supporting documents. Moreover, said document was not in the language of the procedure. The Panel would have anyway accepted that supplemental filing because it consisted of an evidence that was not available at the date of the Amended Complaint filing. However, although the Panel requested for an English translation of the document, the Complainant did not submit it within the due term. Said document will be therefore disregarded according to paragraph 3(c) of ADR Rules.
According to paragraph 10(1) of ADR Rules, the Complainant shall show that the disputed domain name is identical or confusingly similar to the name or names in respect of which a right or rights are recognized or established by national and/or European Union law.
The Panel remarks that the Complainant has not provided evidence of ownership neither of a registered trademark nor of a presently registered domain name identical or similar to the disputed domain name.
Nevertheless, EATIP rights on the name EURASTIP derives from: a) European Union law insofar the name EURASTIP is a project identifier granted to EATIP by the EU Commission in 2017 and funded by the EU Horizon 2020 program; b) an unregistered trademark that the Complainant has shown to be well-known according to art. 6bis of the Paris Convention.
The Panel finds that the grant agreement No. 728030 issued from the EU Commission and clearly stating the name EURASTIP for the project is a formal attribution of the name use and project management to the beneficiary EATIP.
About the relevance of EURASTIP unregistered trademark, the Panel has checked that the Complainant's national law does not provide a protection of unregistered trademarks, the only exception being the protection of well-known marks as prescribed by art. 6bis of Paris Convention (see articles 2.2. and 2.4 of the current version of the Benelux Convention on Intellectual Property entered into force on March 1, 2019). Art. 6bis of Paris Convention states that a trademark cannot be used and/or registered in the territory of the member

states when it is a reproduction, imitation or a translation liable to cause confusion with another trademark already known in the territory as being of ownership of a third entitled party for the same goods and services.
The Panel maintains that the Complainant has submitted proper evidence of creation of the mark and of its continuous and genuine use during the EURASTIP project duration. Evidences also show that the project and the corresponding trademark were well-known in the aquaculture field at different levels, the same project involving universities, research centers, affiliated organizations and industries operating in aquaculture, seated both in Europe and in the far-east Asia. The brochures of events submitted by the Complainant mention the sponsorship of important international organization and programs, like but not limited to Ofxam and SwitchAsia (Oxfam is an international confederation of independent charitable organizations focusing on the alleviation of global poverty, while SwitchAsia is an international program on sustainable consumption and production).
EURASTIP trademark is clearly visible on all the advertising and promotional material as well as in EATIP's web site and in EURASTIP web site as long as this last one was active. The mark was also advertised on social networks, like Twitter.
If we then compare said trademark to the disputed domain name, we see that the former consists of the word EURASTIP and a fancy logo above it, but its dominant element is the verbal element which is exactly reproduced in the disputed domain name. These circumstances entail a visual and phonetic similarity between the Complainant's unregistered trademark and the disputed domain name which are likely to cause confusion.
The Panel therefore maintains that the Complainant has satisfied the first requisite set by ADR Rules.
The Panel moreover maintains that the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name EURASTIP. Since the Respondent did not file a response within the term set by the Case Administrator, the Panel has based the present decision on the evidence submitted by the Complainant and the information publicly available in the Internet.
There is no evidence that the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so. There aren't even evidences that the Respondent is commonly known by the domain name and is making a legitimate and non-commercial or fair use of the domain name. By the information retrieved in the Internet, it looks that the Respondent is a French company officially registered with the name SASU G2 Edition and having as corporate purpose the management of Internet portals. The Respondent did not forward evidence of rights or legitimate interests related to the word EURASTIP. On the other hand, the documents submitted by the Complainant show that the disputed domain name previously belonged to EATIP. A technical error is likely having been occurred between December 2020/January 2021 which caused the deletion of the domain name from the Complainant's account held by Register.com without that its transfer to a new registrar had been meanwhile completed, as requested by the Complainant. These circumstances show a Complainant's legitimate interest in getting the ownership of the domain name back on one side and have not been contested by the Respondent on the other side.
Since two of the grounds set under Paragraph B11(d)(1)(i)(ii) of the ADR Rules are satisfied, there is no need to check the third ground set in the same Paragraph relating to the disputed domain name registration or use in bad faith by the Respondent.
The Panel finally remarks that the email sent by the Respondent to the Complainant's IT provider on February 16, 2021 would have added relevant elements for the present decision, but since it was not in the language of the proceeding and a translation was not forwarded within the due term, it has been disregarded.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <EURASTIP.EU> be transferred to the Complainant.

PANELISTS

Name	Roberta Calò

DATE OF PANEL DECISION 2021-04-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: EURASTIP.EU

II. Country of the Complainant: BELGIUM, country of the Respondent: FRANCE

III. Date of registration of the domain name: 21 JANUARY 2021

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. project identifier granted to the Complainant by the EU Commission;
2. well-known unregistered trademark according to art. 6bis of Paris Convention

V. Response submitted: No

VI. Domain name is identical to the Complainant's project identifier granted by the EU Commission and confusingly similar with the Complainant's unregistered trademark

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. NO
2. Why: there is no evidence that the Respondent has used the DN or a name corresponding to the DN for the offering of goods or services or there are demonstrable plans to do so; the Respondent is known with another name and there are no evidences of a trademark or other right or legitimate interest in the name EURASTIP belonging to the Respondent; the Respondent is not making a legitimate and non-commercial use or fair use of the DN

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. NO
2. -

IX. Other substantial facts the Panel considers relevant: the Complainant has shown that the disputed domain name was previously in its name and had been used for managing a project having the same name granted by the EU Commission. It has been acquired by the Respondent due to a technical error occurred in its transfer from the previous registrar to a new one.

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: a document submitted by the Complainant that contained relevant elements for the decision has been disregarded for lack of translation in the language of the proceeding

XII. Is Complainant eligible? YES